IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4128 OF 2005
IN
FIRST APPEAL (ST.)NO.13790 OF 2005

Sau Mira Arvind Pawar. ..Applicant.

V/s.

Shri Ramakant R. Dhokane. ..Respondent.

Mr.Sachin Chavan for S.S.Kulkarni for applicant.

Mr. Haridas for P.H.Joshi for respondent No.1.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 12, 2006.

P.C. :

1. Heard counsel for the parties.

2. The applicant filed suit before the Court of Civil Judge, Senior Division, Nashik seeking declaration and injunction against the respondent on the basis of title. According to the applicant, she had right in respect of the disputed property emanating from the Will executed by her father. The suit is between the applicant and the respondent No.1 who is father and respondent No.2 who is the sister of the applicant. It is not a suit between wife on the one hand and husband or his relatives on the other hand with regard to the property in dispute.

If it is so, in view of explanation under notification issued by the State Government under the provisions of Bombay Court Fees Act, 1959, whereunder 580 No.STP 1094/CR.-859/M-1, the suit instituted by the applicant cannot be said to be a property dispute as it is not arising out of and concerning the matrimonial matters.

3. The counsel for the applicant however, relying on the decision in the case of **M/s. Jyoti S. Doshi Vs.Hindustan Hosiery Mills reported in 2000(4) All MR 389** would contend that even the present suit was filed by the applicant in the individual capacity-for which reason the same will be governed by the notification which prevailed at the relevant time when the suit was instituted. The learned counsel contends that the present application is in continuation of the suit. Benefit of the notification which enured in favour of the applicant at the time of filing of the suit will have to be extended even at the stage of appeal. It is not possible to accept this submission in view of notification issued by the State Government under the provisions of Bombay Court Fees' Act referred to above. Such notification provides for explanation which clearly postulates that expression "property

disputes" means property disputes arising out of and concerning matrimonial matters. The appeal will be governed by the said notification and the benefit which was extended to the concerned applicant at the stage of institution of suit in the earlier notification cannot continue in view of the changed circumstances. Indeed, the appeal is in continuation of the suit, but for the purpose of court fees, whether the applicant is entitled to be exempted from the payment of the court fee for filing the appeal will have to be reckoned on the basis of the law in force on the date of institution of the appeal and not the provisions which operated at the time of institution of the suit.

4. Viewed in this perspective, stand taken on behalf of the applicant will have to be negatived. Hence, this application should fail. Accordingly, the same is dismissed.

5. Applicant to pay necessary court fee within four weeks, if so advised, failing which appeal to stand dismissed for non-prosecution without further reference to the court.